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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

STATE COMPENSATION INSURANCE ) CASE NO.: CV 09 2959 JSW (EDL)  
 FUND, )

Plaintiff,

vs.

**STIPULATION AND ~~[PROPOSED]~~  
 ORDER FOR LEAVE TO FILE  
 AMENDED COMPLAINT AND  
 AMENDED ANSWER**

METROPOLITAN WEST SECURITIES )  
 LLC, a California limited liability company,; )  
 WACHOVIA BANK, N.A.; DOES 1 through )  
 10 inclusive; and DOES 11 through 20 )  
 inclusive, )

Defendants.

## STIPULATION

Plaintiff State Compensation Insurance Fund (“Plaintiff”) and Wells Fargo Bank, N.A. (successor by merger to Defendant Wachovia Bank, N.A.) and Defendant Metropolitan West Securities LLC (“Defendants”) stipulate through their counsel as follows:

WHEREAS the parties agreed in their joint case management statement that December 15, 2009 would be the deadline to seek leave to file amended pleadings and further agreed that the parties would meet and confer in good faith if either party desired to file an amended pleading after that date;

WHEREAS Plaintiff wishes to file an amended complaint, the amended complaint involves the same general operative facts as the original complaint, and the filing of which would not require additional discovery or impact the current case management schedule;

WHEREAS Defendants wish to amend their answer to include a new affirmative defense of failure to mitigate damages;

WHEREAS the parties met and conferred and agreed that there was good cause to allow both proposed amended pleadings to be filed;

WHEREAS the parties agreed that, for purposes of efficiency, Plaintiff would identify new allegations in the Amended Complaint to which it requires an admission or denial;

WHEREAS the parties agree that this stipulation is without prejudice of any party to oppose amended allegations or defenses on the merits;

## NOW THEREFORE, IT IS HEREBY STIPULATED THAT:

1. Plaintiff may file the amended complaint attached hereto as Exhibit A (the “Amended Complaint”). The Amended Complaint shall be deemed filed the date of entry of order providing Plaintiff leave to amend.

2. Defendants’ original answer (Doc. No. 13) shall be deemed a response to the allegations in Amended Complaint, except with respect to the list of allegations attached hereto as Exhibit B. All allegations in the Amended Complaint that were not in the original complaint and are not identified in Exhibit B are deemed denied. All affirmative defenses asserted in the original

1 answer are deemed to apply to the claims in the Amended Complaint, irrespective of whether the  
2 allegations supporting the claim appear in Exhibit B.

3 3. Within 30 days of notice of entry of the order giving Plaintiff leave to file the  
4 Amended Complaint, Defendant shall file and serve an answer to the Amended Complaint  
5 admitting or denying the allegations identified in Exhibit B. In their answer, Defendants may, if  
6 they so choose, admit or deny additional allegations in the Amended Complaint not identified in  
7 Exhibit B.

8 4. Defendants' answer to the Amended Complaint may include any additional  
9 affirmative defenses, including but not limited to failure to mitigate.

10  
11 Date: August 12, 2011

BARGER & WOLEN LLP

12  
13 By: /s/ Travis R. Wall  
14 Travis R. Wall

15 Attorneys for Plaintiff STATE  
16 COMPENSATION INSURANCE FUND

17 Date: August 12, 2011

MUNGER, TOLLES & OLSON LLP

18 By: /s/ James C. Rutten  
19 James C. Rutten

20 Attorneys for WELLS FARGO BANK,  
21 N.A. (successor by merger to Defendant  
22 WACHOVIA BANK, N.A.) and Defendant  
23 METROPOLITAN WEST SECURITIES  
24 LLC  
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1                   PURSUANT TO STIPULATION, AND GOOD CAUSE SHOWING, IT IS SO  
2 ORDERED.

3  
4 DATED: August 12, 2011

  
The Honorable Jeffrey S. White  
United States District Judge